

## **Deposition of Gary D. Kleck**

**Oregon Firearms Federation, Inc., et al. v. Brown, et al.**

**January 25, 2023**



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Oregon Firearms Federation, Inc., et al. v. Brown, et al.

Gary D. Kleck

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

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OREGON FIREARMS FEDERATION,	)	
INC., et al.,	)	
	)	
Plaintiffs,	)	
	)	Case No.
v.	)	2:22-cv-01815-IM
	)	3:22-cv-01859-IM
KATE BROWN, et al.,	)	3:22-cv-01862-IM
	)	3:22-cv-01869-IM
Defendants.	)	
	)	
	)	
	)	
(Continued)	)	

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\* VIDEOCONFERENCE \*  
VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION  
OF EXPERT  
GARY D. KLECK

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Witness located in:  
  
Tallahassee, Florida

\* All participants appeared via videoconference \*

DATE TAKEN: January 25, 2023  
REPORTED BY: Tia B. Reidt, Washington RPR, CSR #2798  
Oregon #22-0001

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(Continued) )  
)  
MARK FITZ, et al., )  
)  
Plaintiffs, )  
v. )  
)  
ELLEN F. ROSENBLUM, et al., )  
)  
Defendants. )  
)  
KATERINA B. EYRE, et al., )  
)  
Plaintiffs, )  
v. )  
)  
ELLEN F. ROSENBLUM, et al., )  
)  
Defendants. )  
)  
DANIEL AZZOPARDI, et al., )  
)  
Plaintiffs, )  
v. )  
)  
ELLEN F. ROSENBLUM, et al., )  
)  
Defendants. )

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1 the left column of Table 1?

2 A. I just went through their listing year by year  
3 of mass shootings.

4 And by the way, when -- I first did this quite  
5 a few years back. So at one point they had 2013 data,  
6 which is why my Table 1 has data for 2013. But if you  
7 consult recent versions of that database, for some  
8 reason or another, they don't have 2013 anymore. I  
9 don't know if it's because they thought, you know,  
10 their compilation was suddenly unreliable or whatever,  
11 but...

12 So, you know, and this is a -- this is a table  
13 I've been working with for years, not just in recent  
14 legal cases. And so each of those numbers in the mass  
15 shootings column could change, and it's not -- it's not  
16 necessarily what I compiled in, I don't know, like,  
17 January of 2022. That's not necessarily what's  
18 reflected in the table because I worked on it in  
19 earlier years as well.

20 Q. Take me through the process of how you  
21 consulted the data.

22 A. Just going through the Gun Violence Archive  
23 listing of individual mass shootings. And, you know,  
24 the vast majority of what they classify as mass  
25 shootings, they don't involve four or more dead. That

1 is, they're not limited to cases that -- that I would  
2 have -- that met my criterion. And so it's a matter of  
3 wading through them, looking for the ones where four or  
4 more were killed.

5 And then among the ones where it was exactly  
6 four, you've also got to check to see whether or not  
7 the -- that count includes killings of people other  
8 than the victims. It's not just a victim count.  
9 Sometimes it includes suspects. Something I didn't  
10 realize in the early years, by the way. And then later  
11 on, it became evident, oh, they're also counting deaths  
12 of suspects, I think in response to criticism as to  
13 what their death count totals are.

14 So where it's borderline and it barely meets  
15 the criterion of four, then I would have to look at the  
16 details of the incident and confirm that it involved  
17 four or more victims. But that was a real problem for  
18 the early years.

19 Q. In the current dataset, are victims coded --  
20 sorry. Are -- I withdraw that.

21 In the current Gun Violence Archive data, are  
22 shooters categorized in number killed?

23 A. Yes. In -- in the sort of brief summary of  
24 each mass shooting, number of fatalities would include  
25 any suspects killed. But then you can -- you can click



1 on details of the incident and get further information.  
2 And usually it's possible, at least in recent years, to  
3 get which -- which victims were suspects and which were  
4 victims.

5 Q. So there are some instances where the Gun  
6 Violence Archive lists four killings, but they are not  
7 reflected in Table 1?

8 A. They would be in Table 1. But the problem is  
9 that some of those numbers would include counts of  
10 suspects as well as victims.

11 Q. Did you download the data when you produced  
12 Table 1?

13 A. I wouldn't call it "downloading." It simply  
14 reading it off of a computer screen and making tick  
15 marks, tally marks, to count up the number of  
16 incidents.

17 Q. You didn't download a .csv file?

18 A. No.

19 Q. And your best recollection is you did this in  
20 January of 2022?

21 A. That's probably the most recent one I've done  
22 for recent years, but I did it -- earlier parts of that  
23 table for the earlier years prior to that going --

24 Q. Is -- is your typical professional practice  
25 not to keep the data that you rely on in your scholarly

1 work?

2 A. Not at all.

3 Q. Maybe I asked a bad question there.

4 Do you typically keep the data that you rely  
5 on for your scholarly work?

6 A. Yes.

7 Q. Did you keep the data in this instance?

8 A. Yes.

9 Q. How so?

10 A. Well, I mean, you can see it in Table 1. I  
11 mean, those are -- those are simply the numbers that I  
12 counted up. So that is the original data.

13 Q. But the -- those numbers can't be reproduced  
14 by looking at the Gun Violence Archive today, can they?

15 A. Yeah, you could -- you could certainly test  
16 them. In other words, if the violence policy  
17 archive -- I'm sorry, the Gun Violence Archive people  
18 hadn't revised anything, then the numbers should pretty  
19 much jibe -- what you would get going through their  
20 current database would jibe with what's in Table 1.  
21 But as I say, unfortunately, they're always revising,  
22 and so there can be a little bit of deviation from  
23 what's shown in Table 1 and what's in the Gun Violence  
24 Archive database at any one moment in time.

25 Q. Wouldn't that be a good reason to preserve the

1 actual observations that you were relying on when you  
2 were producing Table 1?

3 A. Sure.

4 Q. But you chose not to?

5 A. No, I did.

6 And again, what you see in Table 1 is it.

7 Q. You have no record of what 21 mass shootings  
8 you're counting for year 2020 in this data; right?

9 A. I don't think so. I don't -- in other words,  
10 places and dates and so on, that kind of detail?

11 Q. Right.

12 A. No. No, it was just a tabulation.

13 Q. So if it shows 23 now, the likely explanation  
14 is that Gun Violence Archive updated its database to  
15 add two additional shootings?

16 A. Yeah, or there were -- there are changes in  
17 details as to what they were counting, victims versus  
18 suspects. That's -- that can change. I think what  
19 sometimes happens, I've seen some indications that  
20 they'll get additional media reports submitted to them  
21 where it provides more detail, and it becomes apparent,  
22 oh, yeah, that guy was a suspect -- that victim was a  
23 suspect, not a victim in the ordinary sense.

24 Q. Can you infer from Table 1 of your declaration  
25 how many mass shootings did not use a large-capacity

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1 the criticisms, which is not a scholarly practice. You  
2 know, scholars will respond to criticism with some kind  
3 of a rebuttal, but those who are big fans of the notion  
4 that defensive gun use is rare simply don't respond.

5 Q. Are you familiar with William English of  
6 Georgetown University?

7 A. Yeah. Yeah.

8 Q. Are you familiar with the 2021 National  
9 Firearms Survey he's posted on SSRN?

10 A. Yeah.

11 Q. What do you think of that survey?

12 A. I don't think you can rely on it.

13 Q. Why not?

14 A. He's vague about exactly how he developed his  
15 sample. And there's nothing in his report to  
16 contradict the assumption that what he had was a  
17 self-selected sample, where people were in effect --  
18 who arrived at, let's say, a website were invited to  
19 participate. And that's not a valid sample technique  
20 to generate a sample that's representative of the  
21 larger US population.

22 Q. Why does that matter?

23 A. Well, because you can't then generalize the  
24 results from your sample to the population as a whole.  
25 You only know, well, this was what was true in my

1 sample, which was to some extent self-selected, but you  
2 can't know that it applies in any way, shape, or form,  
3 to the US population as a whole.

4 Q. Do you have other concerns with - with the  
5 2021 National Firearms Survey that Dr. English posted  
6 on SSRN?

7 A. No. That's sufficient.

8 Q. Without -- without that information that is  
9 missing, you would not rely on that survey for any  
10 purpose?

11 A. That is correct. I would not rely.

12 Q. Your thesis is that -- about the NRA defensive  
13 use data, that NRA staff intentionally omit stories of  
14 defensive gun use that have greater than ten rounds  
15 fired?

16 A. I think they omit any kind of an incident that  
17 would make defensive gun use look less reputable, less  
18 responsible. If there's an excessive number of rounds  
19 fired, they would be very reluctant to include that  
20 among the incidents they publicize by putting it into  
21 the armed citizen column.

22 Q. Why do you think that firing more than ten  
23 rounds is excessive?

24 A. Well, it's unusual, for starters. And many  
25 people would interpret it as indiscriminate fire. They

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## C E R T I F I C A T E

STATE OF WASHINGTON

COUNTY OF PIERCE

I, Tia Reidt, a Certified Court Reporter in and for the State of Washington, do hereby certify that the foregoing transcript of the deposition of GARY D. KLECK, having been duly sworn, on January 25, 2023, is true and accurate to the best of my knowledge, skill and ability.

Reading and signing was requested pursuant to FRCP Rule 30(e).

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 1st day of February, 2023.



/S/ Tia B. Reidt  
Tia B. Reidt, RPR, CSR #22-0001  
NOTARY PUBLIC, State of  
Washington.  
My commission expires  
5/15/2026.